

BEVERLY J. MACDOWELL  
DOROTHY LANGLEY

IBLA 82-1237

Decided February 15, 1983

Appeal from decision of Eastern States Office, Bureau of Land Management, canceling oil and gas lease ES 22244.

Affirmed; case file remanded with instructions.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1 (1979), disqualification to receive a lease is automatic.

2. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bona Fide Purchaser -- Words and Phrases

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

3. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Cancellation

Where, at the time of an assignment of an oil and gas lease, BLM's records pertaining to the lease reveal that the lease

had been improperly issued to the number one drawee in a simultaneous oil and gas lease drawing and also reveal that the second drawee had made inquiries as to why the lease had not been issued to her, the assignee of the lease is not a bona fide purchaser, for she is deemed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

APPEARANCES: Harold D. Rogers, Esq., Wichita Falls, Texas, for appellants; S. B. Christy IV, Esq., Roswell, New Mexico, for Judy Harris.

#### OPINION BY ADMINISTRATIVE JUDGE LEWIS

Beverly J. Macdowell, first drawee, and Dorothy Langley, purported assignee of oil and gas lease ES 22244, appeal from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated July 23, 1982, canceling the oil and gas lease in question because it had been erroneously issued. The decision of the Eastern States Office stated that it should have rejected Macdowell's lease offer because she failed to submit the first year's rental within 15 days of receipt of notice that such rental was due as required by 43 CFR 3112.4-1 (1979).

In its decision canceling the lease, BLM offered the following explanation as to why the lease issued:

A Notice of Rental Due was sent to you by certified mail on October 16, 1979. The Notice required the first year's rental for Parcel ES-219 of \$964.00 and advised,

"In accordance with regulations 43 CFR 3112.4-1, payment of the first year's rental must be received in this office within fifteen (15) days from receipt of this Notice. If the rental is not paid within the time allowed, you will be automatically disqualified to receive the lease."

On November 19, 1979, the envelope containing the Notice was returned by the Postal Service undelivered and stamped "unclaimed." Regulation 43 CFR 1810.2(b), Communications by mail; when mailing requirements are met, states that "where the authorized officer uses the mails to send a notice or other communication to any person entitled to such . . . that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record . . . because delivery was refused . . . will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities." Claim Check No. 334631 attached to the envelope shows

that a first notice of attempted delivery was given October 27, 1979, a final notice (undated), and the envelope returned November 12, 1979. The envelope was placed in the case file when received and the 15 day period for submitting rental commenced November 19, 1979.

Because no rental was received, your offer was automatically disqualified on December 3, 1979, in accordance with 43 CFR 3112.4-1, controlling at the time, and a Notice of Rental Due was sent to Judy Harris as second priority drawee. When rental was received from Ms. Harris the lease was prepared for issuance.

However, the lease document was prepared in advance showing you as the lessee, and by unfortunate administrative error, the name on the lease form was not changed to reflect Judy Harris as lessee. Consequently, the lease inadvertently issued to Beverly J. Macdowell, effective March 1, 1980. To further compound the error, rentals for 1981 and 1982 were paid by you and accepted by this office.

BLM concluded by stating that Macdowell's failure to pay the rental automatically disqualified her as an offeror. BLM therefore canceled the lease so that it could be reissued to the first-qualified applicant.

On appeal appellants contend that the lease was issued to Macdowell, effective March 1, 1980; that Macdowell paid the rental on the lease in 1981; that Macdowell transferred the lease to Langley on January 19, 1982; that Langley became the record owner of the lease when she acquired the lease on January 19, 1982, citing 43 CFR 3108.3, the regulation regarding bona fide purchasers; that BLM accepted rental from Langley in 1982; and that BLM issued a "Receipt and Accounting Advice" to Langley showing the "Assignment of Record Title" to Langley.

In response, Judy Harris, whose offer was drawn with second priority for parcel ES-219, asserts that Langley is not a bona fide purchaser because she has failed to produce evidence that she is a bona fide purchaser; that Langley cannot be a bona fide purchaser because BLM's records show that Macdowell was never entitled to the lease; that the case file is replete with evidence that Macdowell's offer to lease was defective for failure to pay the rental; that letters in the case file show that Harris made inquiries to BLM regarding her claim to be first-qualified applicant prior to January 19, 1982, the date of the purported assignment of the lease to Langley.

Harris also asserts that she received a Notice of Rental Due for the first year's rental from BLM and made payment within the time required.

Appellants replied to Harris' arguments by stating that Langley purchased the lease from Macdowell for \$2,650 and submitted copies of the promissory note and canceled check in payment of such note. Langley states that she was a bona fide purchaser for value of the lease and, therefore, pursuant to 43 CFR 3108.3(c), Langley, as assignee, is the legal and record owner of the lease.

[1] The applicable regulation governing offers made at the time appellant submitted her lease offer, 43 CFR 3112.4-1 (1979), 1/ reads as follows:

§ 3112.4-1 Rental payment.

A lease will be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

The disqualification is automatic and affords no latitude for any exercise of discretion by BLM. Robert E. Bergman, 53 IBLA 122 (1981); Susan Dawson, 35 IBLA 123 (1978), aff'd, Dawson v. Andrus, 612 F.2d 1280 (1980). The regulation advances the priority of the next drawee and precludes the application of 43 CFR 1821.2-2(g), allowing for Departmental discretion on acceptance of late filed documents, because the rights of a third party have intervened. Robert E. Bergman, supra; William H. Bevis, 52 IBLA 125 (1981); Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975), wherein the court held that the regulation 43 CFR 3112.4-1 is mandatory and allows no consideration of excuses for late payment.

Macdowell failed to submit payment during the required time and it was therefore error to issue the lease to her. Her lease was properly canceled. Norman Monath, 32 IBLA 392 (1977). This is because a noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department. 30 U.S.C. § 226(c) (1976). Paul N. Temple, 69 IBLA 54 (1982); Trans-Texas Energy, Inc., 56 IBLA 295 (1981); see Boesche v. Udall, 373 U.S. 472 (1963). Macdowell, having failed to pay the rental within the time prescribed by 43 CFR 3112.4-1, was automatically disqualified to receive the lease and issuance of the lease to her was contrary to 30 U.S.C. § 226 (1976).

Also, while it is unfortunate that BLM mistakenly issued the lease to Macdowell, it is clear that the Secretary of the Interior has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, supra; Fortune Oil Co., 69 IBLA 13 (1982); Husky Oil Co., 52 IBLA 41 (1981); Paul N. Temple, 33 IBLA 98 (1977).

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1/ The regulations at 43 CFR Subpart 3112 governing the simultaneous oil and gas leasing program have been revised (45 FR 35163 (May 23, 1980)). A priority applicant now has 30 days to return to BLM a signed lease agreement with the appropriate rental, the timely receipt of both constituting an offer to lease. 43 CFR 3112.4-1.

[2] The main thrust of appellants' argument is that Langley is a bona fide purchaser of Macdowell's lease. The interest in a Federal oil and gas lease held by a bona fide purchaser is not subject to cancellation even though the lease offer filed by a predecessor in title was defective and the lease was subject to cancellation while title was held by the predecessor. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2 (1979). <sup>2/</sup> A bona fide purchaser must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Winkler v. Andrus, 614 F.2d 707, 711 (10th Cir. 1980); Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966). However, assignees who seek to qualify as bona fide purchasers are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment. Winkler v. Andrus, *supra* at 713; O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977). Bona fide purchaser protection applies only where consideration has actually been paid prior to actual or constructive notice of an outstanding interest or defect in title. Richard W. Eckels (On Reconsideration), 65 IBLA 76 (1982).

The lease in question was issued to Macdowell effective March 1, 1980. Exhibit A attached to appellants' statement of reasons reveals that Macdowell assigned her lease to Langley on January 19, 1982. Macdowell also submitted a copy of a promissory note dated January 19, 1982, which stated that Langley promised to pay \$2,650 for the purchase of the lease on or before July 1, 1982. "Paid in full 7-1-82" is handwritten across the face of the note. There is also a copy of a check dated July 1, 1982, from Langley to Macdowell in the amount of \$2,650.

[3] The case file contains several relevant documents dated prior to the assignment. There is a copy of the notice of rental due dated October 16, 1979, which BLM sent to Macdowell. Attached to this is an envelope addressed to Macdowell containing the notice of rental due. The return receipt for certified mail is marked unclaimed as explained in BLM's decision. There is no evidence in a file that Macdowell paid the rental for 1980. In a letter to BLM dated April 20, 1981, Harris stated that she had been awarded lease ES 22244, in the drawing of August 1979, had paid the rental on January 8, 1980, had received a rental receipt dated January 17, 1980, and made inquiry concerning the status of the lease. Harris wrote another letter dated July 14, 1981, in which she reiterated essentially the same information. BLM responded by letter dated August 19, 1981, stating that the lease had been erroneously issued to Macdowell. The file also contains a copy of the rental receipt dated January 17, 1980, to which Harris referred. BLM's letter stating that the lease had been erroneously issued to Macdowell, together with Harris' inquiries, the "unclaimed" return receipt card, and no evidence that Macdowell had paid the rental, should have raised serious questions whether Macdowell's lease was issued in violation of the regulations. Thus, we find that Langley should have known that the lease to Macdowell had been improperly issued at the time of the assignment, and BLM's decision to cancel the lease was correct. See York Associates, Ltd., 58 IBLA 25 (1981).

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<sup>2/</sup> The current regulation dealing with bona fide purchasers is found at 43 CFR 3108.3(c).

Appellants assert that BLM accepted Langley's rental for 1982 and issued a "Receipt and Accounting" to Langley showing the assignment of record title to Langley. Appellants attach a copy of Langley's canceled check to BLM for the rental for 1982. There is a receipt for payment dated March 4, 1982, which was sent to Macdowell. The Board has held, however, that the fact that BLM cashed a check for rental payment does not constitute acceptance of the rental payment. Robert E. Bergman, supra.

Nor can appellants be helped by the fact that BLM issued a receipt and accounting advice dated February 18, 1982, in which it named Langley as an applicant for assignment of record title to the lease. Although the document may indicate that a copy of the assignment was filed with BLM, there is no copy of the assignment in the file which an assignee is required to file under 43 CFR 3106.3-1.

The copy of the assignment included with Macdowell's statement of reasons is not clear enough to indicate whether the assignment was approved by BLM, though we note that in its memorandum of transmittal BLM indicated that the assignment had not been approved. Regarding approval of assignments, the Board has held that an assignee is not required to file the assignment with BLM for approval as a condition of bona fide purchaser status. Frederick J. Schlicher, 54 IBLA 61 (1981). Even if the assignment had been approved, Langley would not be helped by this fact because her imputed knowledge that Macdowell's lease was erroneously issued defeats her status as bona fide purchaser. Cf. Ervin Staacke, 62 IBLA 278, 285 (1982). In light of the fact that Macdowell's lease has been canceled and Langley does not qualify as a bona fide purchaser, we remand this case to BLM for issuance of the lease to Harris, all else being regular. See Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981). We also direct BLM to refund to Macdowell and Langley the rental which they paid.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the case remanded to BLM with instructions.

Anne Poindexter Lewis  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Bruce R. Harris  
Administrative Judge

